

IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

TRUSTMARK NATIONAL BANK,
T. HARRIS COLLIER, III, as Substituted Trustee

PLAINTIFFS

V.

CIVIL ACTION NO. 04-04-0625

PHOENIX CHAPEL AFRICAN METHODIST
EPISCOPAL CHURCH, INC.; PHOENIX CHAPEL
HUMAN DEVELOPMENT CORPORATION;
PHOENIX CHAPEL CHILD DEVELOPMENT
CENTER; MICHAEL L. MARTIN; WILLIE N. GRAY;
MELVIN L. GUY; ESTATE OF KATIE HOLLOWAY;
BEN BAKER; MARY KENERSON; ROBERT GUY;
DEDRIA BASTROPH; CARLYON SMITH; KAREN MAYS;
JEAN JOHNSON; ERIC J. BOONE; PATRICIA GUY;
VICKY R. COLLIER; CYNTHIA J. HAILEY; ELIAS GUY;
DOROTHY PHILLIPS; WILLIE BOONE; LIZZIE GRAY;
HOWARD SOMMER; SEARS, ROEBUCK & COMPANY;
GENERAL ELECTRIC CAPITAL CORP.; MISSISSIPPI
STATE TAX COMMISSION; NORTH MISSISSIPPI
DRIVEWAYS, INC.; NFC FINANCE CORP.; EXPRESS
BODY WORKS, LLC; JOHN DOE(S) 1-50;
FAITH COMMUNITY A.M.E. CHURCH;
THE EIGHTH EPISCOPAL DISTRICT OF THE
AFRICAN METHODIST EPISCOPAL CHURCH,
INCORPORATED; and INFORMATION LEASING
CORPORATION A/K/A NATIONAL CITY COMMERCIAL
CAPITAL CORPORATION

DEFENDANTS

PARTIAL FINAL JUDGMENT IN FAVOR OF PLAINTIFFS

THIS CAUSE came on to be heard before this Court on January 22-23, 2007, with the trial of the matter recommencing and concluding on May 7, 2007. The Court having heard the evidence presented at the trial of this matter, and considering the entire record in this matter, finds as follows:

1. The Court has jurisdiction of the subject matter and the parties herein. Defendants have been properly summoned and are properly before the Court. All parties having an interest in the properties that are the subject of this action have been joined herein. The Court may enter partial

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final relief hereon.

2. The Land Deeds of Trust I and II, as more specifically described in the Fourth Amended Complaint and filed of record on February 28, 2001, with the Chancery Clerk's office of Desoto County, Mississippi, at Book 1294, page 249 and re-recorded in Book 1299 Page 337 (Land Deed of Trust I), and Book 1294, page 244 (Land Deed of Trust II), respectively, should both be reformed to comport with and give full legal effect to the parties' intentions, specifically, to include in the acknowledgments in both Deeds of Trust the statutorily-prescribed language "signed and delivered" pursuant to Miss. Code Ann. § 89-3-7.

3. Further, Land Deed of Trust I, as more specifically described in the Fourth Amended Complaint and filed of record on February 28, 2001, with the Chancery Clerk's office of Desoto County, Mississippi, at Book 1294, page 249 and re-recorded in Book 1299 Page 337, should be reformed to reflect that the Land Deed of Trust I was properly and duly executed by Defendant Phoenix Chapel Human Development Corporation, and the acknowledgment should be reformed to reflect that the Land Deed of Trust I was properly and duly signed and delivered by Defendant Phoenix Chapel Human Development Corporation, consistent with the parties' intention at the time of execution of the Land Deed of Trust I.

4. The Plaintiffs, Trustmark National Bank and T. Harris Collier, III, Substituted Trustee ("Trustmark"), by and through designated counsel, should be authorized to make the specific revisions stated above to the original Land Deeds of Trust I and II described above, as follows:

- a. Add the statutorily-prescribed language, "signed and delivered" to the acknowledgment on both Land Deeds of Trust I and II as described herein;
- b. Revise the signatory line of Land Deed of Trust I to indicate that Land Deed

of Trust I was properly and duly executed by and on behalf of an authorized representative of Phoenix Chapel Human Development Corporation; and,

- c. Revise the acknowledgment in Land Deed of Trust I to indicate that Land Deed of Trust I was properly and duly signed and delivered by and on behalf of an authorized representative of Phoenix Chapel Human Development Corporation.

5. Trustmark, after making the ordered revisions to Land Deeds of Trust I and II as specified above, should be authorized to record the revised Land Deeds of Trust I and II in the Land Records of the Chancery Clerk of Desoto County, Mississippi.

6. The Court shall appoint a special commissioner to conduct a foreclosure sale of the properties subject of the Land Deeds of Trust I and II described above as follows:

- a. Honorable Toni Campbell Parker shall be appointed as special commissioner for the purpose of conducting a foreclosure sale of the properties subject to the Land Deeds of Trust I and II filed of record on February 28, 2001, with the Chancery Clerk's office of Desoto County, Mississippi, at Book 1294, page 249 and re-recorded in Book 1299 Page 337 (Land Deed of Trust I), and Book 1294, page 244 (Land Deed of Trust II), respectively;
- b. Honorable Toni Campbell Parker, as special commissioner, shall be authorized to execute the trusts and properties described therein in accordance with the terms of the Land Deeds of Trust I and II and to conduct a foreclosure sale of the properties subject to the Land Deeds of Trust I and II in accordance with the private foreclosure sale laws, Miss. Code Ann. § 89-1-1

et seq.;

- c. Honorable Toni Campbell Parker, as special commissioner, shall be authorized to execute and deliver a good and valid commissioner's deed to the respective purchasers at the foreclosure sale;
- d. Honorable Toni Campbell Parker, as special commissioner, shall be authorized, following the foreclosure sale, to disburse the proceeds of the sale, following payment of the special commissioner's fees and expenses of the foreclosure sale, for payment of all liens and/or encumbrances against the properties described in the Land Deeds of Trust I and II, in order of priority; and,
- e. The special commissioner, Toni Campbell Parker, shall be discharged upon completion of the foreclosure sale and disbursement of the sale proceeds as specified herein.

7. Trustmark shall be entitled to a deficiency judgment against Phoenix Chapel A.M.E. Church and Phoenix Chapel Human Development Corporation, if any, following foreclosure, with the amount of any such deficiency to be paid, if any, to be determined at a subsequent confirmation hearing following foreclosure.

8. Trustmark shall be entitled to a permanent injunction that no personal property or fixtures be removed from the premises of either property subject of the Land Deeds of Trust I and II pending full and complete satisfaction of all liens and/or encumbrances against the subject properties.

ACCORDINGLY, IT IS THEREFORE ORDERED, DECREED, and ADJUDGED as

follows:

I. The Land Deeds of Trust I and II, as more specifically described in the Fourth Amended Complaint and filed of record on February 28, 2001, with the Chancery Clerk's office of Desoto County, Mississippi, at Book 1294, page 249 and re-recorded in Book 1299 Page 337, and Book 1294, page 244, respectively, are hereby reformed to comport with and give full legal effect to the parties' intentions, specifically, to include in the acknowledgments in both Deeds of Trust the statutorily-prescribed language "signed and delivered" pursuant to Miss. Code Ann. § 89-3-7.

II. Land Deed of Trust I, as more specifically described in the Fourth Amended Complaint and filed of record on February 28, 2001, with the Chancery Clerk's office of Desoto County, Mississippi, at Book 1294, page 249 (and re-recorded in Book 1299 Page 337), is hereby reformed to reflect that the Land Deed of Trust I was properly and duly executed by Defendant Phoenix Chapel Human Development Corporation, and the acknowledgment should be reformed to reflect that the Land Deed of Trust I was properly and duly signed and delivered by Defendant Phoenix Chapel Human Development Corporation, consistent with the parties' intention at the time of execution of the Land Deed of Trust I.

III. The Plaintiffs, Trustmark National Bank and T. Harris Collier, III, Substituted Trustee ("Trustmark"), by and through designated counsel, are hereby authorized to make the specific revisions stated above to the original Land Deeds of Trust I and II described above, as follows:

- a. Add the statutorily-prescribed language, "signed and delivered" to the acknowledgment on both Land Deeds of Trust I and II as described herein;
- b. Revise the signatory line of Land Deed of Trust I to indicate that Land Deed

- of Trust I was properly and duly executed by and on behalf of an authorized representative of Phoenix Chapel Human Development Corporation; and,
- c. Revise the acknowledgment in Land Deed of Trust I to indicate that Land Deed of Trust I was properly and duly signed and delivered by and on behalf of an authorized representative of Phoenix Chapel Human Development Corporation.

IV. Trustmark, after making the ordered revisions to Land Deeds of Trust I and II as specified above, is hereby authorized to record the revised Land Deeds of Trust I and II in the Land Records of the Chancery Clerk of Desoto County, Mississippi.

V. The Court hereby appoints a special commissioner to conduct the foreclosure sale of the properties subject of the Land Deeds of Trust I and II described above as follows:

- a. Honorable Toni Campbell Parker is hereby appointed as special commissioner for the purpose of conducting a foreclosure sale of the properties subject to the Land Deeds of Trust I and II filed of record on February 28, 2001, with the Chancery Clerk's office of Desoto County, Mississippi, at Book 1294, page 249 and re-recorded in Book 1299 Page 337 (Land Deed of Trust I), and Book 1294, page 244 (Land Deed of Trust II), respectively;
- b. Honorable Toni Campbell Parker, as special commissioner, is hereby authorized to execute the trusts and properties described therein in accordance with the terms of the Land Deeds of Trust I and II and to conduct a foreclosure sale of the properties subject to the Land Deeds of Trust I and II in

accordance with the private foreclosure sale laws, Miss. Code Ann. § 89-1-1
et seq.;

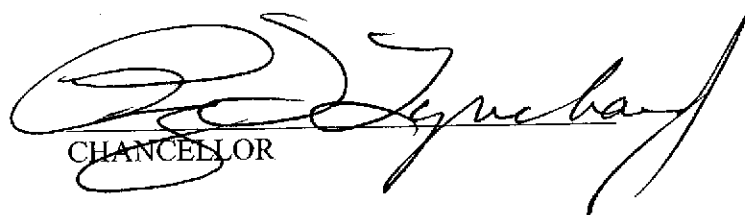
- c. Honorable Toni Campbell Parker, as special commissioner, is hereby authorized to execute and deliver a good and valid commissioner's deed to the respective purchasers at the foreclosure sale;
- d. Honorable Toni Campbell Parker, as special commissioner, is hereby authorized, following the foreclosure sale, to disburse the proceeds of the sale, following payment of the special commissioner's fees and expenses of the foreclosure sale, for payment of all liens and /or encumbrances against the properties described in the Land Deeds of Trust I and II, in order of priority; and,
- e. The special commissioner, Toni Campbell Parker, shall be discharged upon completion of the foreclosure sale and disbursement of the sale proceeds as specified herein.

VI. If there is a deficiency owed to Trustmark by Phoenix Chapel A.M.E. Church and Phoenix Chapel Human Development Corporation following foreclosure, the amount of any such deficiency to be paid, if any, will be determined at a subsequent confirmation hearing following foreclosure.


VII. Trustmark is hereby granted a permanent injunction that no personal property or fixtures be removed from the premises of either property subject of the Land Deeds of Trust I and II pending full and complete satisfaction of all liens and/or encumbrances against the subject properties.

VIII. There is no just reason for delay, and this Partial Final Judgment should and shall be entered as a Final Judgment pursuant to Miss. R. Civ. 54(b).

SO ORDERED, ADJUDGED, AND DECREED this the 23rd day of May, 2007.

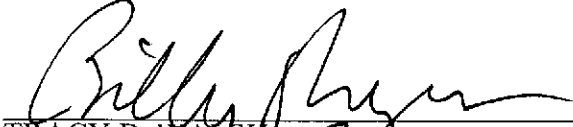

CHANCELLOR

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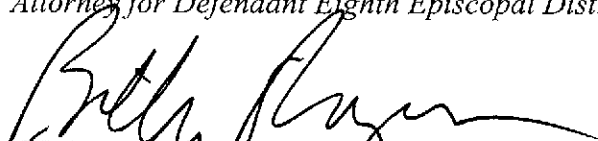
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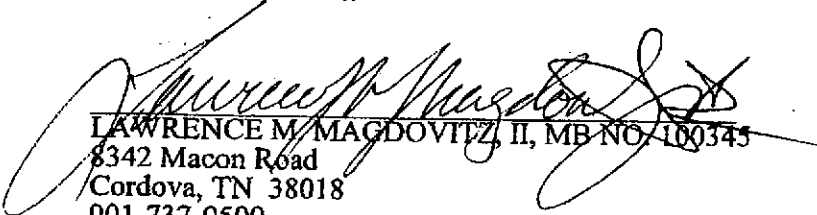
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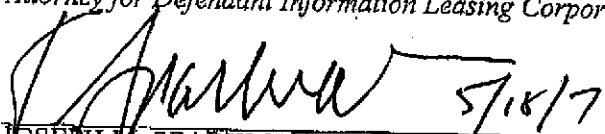
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STATE OF MISSISSIPPI
CHANCERY COURT
SOUTH AVENUE
JACKSON, MISSISSIPPI
WHEREBY I CERTIFY that the above and foregoing is
a true copy of the original filed in this office.
This the 18th day of June, 2007
W. E. Davis, Clerk of the chancery court
By R. Davis D.C.

IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

TRUSTMARK NATIONAL BANK,
T. HARRIS COLLIER, III, as Substituted Trustee

PLAINTIFFS

V.

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HUMAN DEVELOPMENT CORPORATION;
PHOENIX CHAPEL CHILD DEVELOPMENT
CENTER; MICHAEL L. MARTIN; WILLIE N. GRAY;
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DOROTHY PHILLIPS; ESTATE OF WILLIE BOONE; LIZZIE GRAY;
HOWARD SOMMER; SEARS, ROEBUCK & COMPANY;
GENERAL ELECTRIC CAPITAL CORP.; MISSISSIPPI
STATE TAX COMMISSION; NORTH MISSISSIPPI
DRIVEWAYS, INC.; NFC FINANCE CORP.; EXPRESS
BODY WORKS, LLC; JOHN DOE(S) 1-50;
FAITH COMMUNITY A.M.E. CHURCH;
THE EIGHTH EPISCOPAL DISTRICT OF THE
AFRICAN METHODIST EPISCOPAL CHURCH,
INCORPORATED; and, INFORMATION LEASING
CORPORATION A/K/A NATIONAL CITY COMMERCIAL
CAPITAL CORPORATION

DEFENDANTS

FOURTH AMENDED COMPLAINT

COMES NOW Trustmark National Bank, Successor by Merger to Nashoba Bank, by and through its attorneys and T. Harris Collier, III, Substituted Trustee, and files this Fourth Amended Complaint against Defendants as follows:

PARTIES

1. Plaintiff Trustmark National Bank, Successor by Merger to Nashoba Bank ("Trustmark"), is a Mississippi corporation registered to do business in Mississippi and transacting

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business at 500 State Line Road West, Southaven, MS 38671.

2. Substituted Trustee T. Harris Collier, III, may be found at 248 East Capitol Street, Jackson, MS.

3. Phoenix Chapel African Methodist Episcopal Church, Inc. (hereinafter "Phoenix AME"), is a Mississippi non-profit corporation and may be served with process through its registered agent for service of process, Michael L. Martin, at 7340 Greenbrook Parkway, Southaven, Mississippi.

4. Phoenix Chapel Human Development Corporation (hereinafter "Phoenix HDC") is a Mississippi non-profit corporation and may be served with process through its registered agent for service of process, Cynthia Hailey, at 922 Woodburne Place, Southaven, Mississippi.

5. Phoenix Chapel Child Development Center (hereinafter "Phoenix CDC") is a Mississippi non-profit corporation and may be served with process through its registered agent for service of process, Eric J. Boone, at 6011 Elmore Road, Southaven, Mississippi.

6. Michael L. Martin is an adult resident citizen of Mississippi and may be served with process at 7340 Greenbrook Parkway, Southaven, Mississippi. Defendant Michael L. Martin, after diligent search and inquiry, cannot be located at this last known address, and, therefore, service of process will be publication pursuant to M.R.C.P. 4(c)(4). The post office address of Defendant Michael L. Martin is not known to Plaintiffs or Plaintiffs' counsel.

7. Willie N. Gray is an adult resident citizen of Mississippi and may be served with process at 8262 Swinnea Road, Southaven, Mississippi.

8. Melvin L. Guy is an adult resident citizen of Mississippi and may be served with process at 6701 Tchulahoma, Southaven, Mississippi. Defendant Melvin L. Guy, after diligent

search and inquiry, cannot be located at this last known address, and, therefore, service of process will be publication pursuant to M.R.C.P. 4(c)(4). The post office address of Defendant Melvin L. Guy is not known to Plaintiffs or Plaintiffs' counsel.

9. Upon information and belief, Katie Holloway was an adult resident citizen of Mississippi residing at 6709 Tchulahoma, Southaven, Mississippi, but is now deceased. The Estate of Katie Holloway may be served with process by service upon W. E. "Sluggo" Davis, Chancery Clerk of DeSoto County, Mississippi.

10. Ben Baker is an adult resident citizen of Tennessee and may be served with process pursuant to M.R.C.P. 4(c)(5) by certified mail, return receipt ("restricted delivery") to 2032 Clarksdale, Memphis, Tennessee, 38108. Defendant Ben Baker, after diligent search and inquiry, cannot be located at this last known address, and, therefore, service of process will be publication pursuant to M.R.C.P. 4(c)(4). The post office address of Defendant Ben Baker is not known to Plaintiffs or Plaintiffs' counsel.

11. Mary Kenerson is an adult resident citizen of Mississippi and may be served with process at 309-A South Chester Street, Holly Springs, Mississippi.

12. Robert Guy is an adult resident citizen of Tennessee and may be served with process pursuant to M.R.C.P. 4(c)(5) by certified mail, return receipt ("restricted delivery") to 5011 Davis Cove, Memphis, Tennessee 38116. Defendant Robert Guy, after diligent search and inquiry, cannot be located at this last known address, and, therefore, service of process will be publication pursuant to M.R.C.P. 4(c)(4). The post office address of Defendant Robert Guy is not known to Plaintiffs or Plaintiffs' counsel.

13. Dedria Bastroph is an adult resident citizen of Mississippi and may be served with process at 8262 Swinnea Road, Southaven, Mississippi 38671. Defendant Dedria Bastroph, after diligent search and inquiry, cannot be located at this last known address, and, therefore, service of process will be publication pursuant to M.R.C.P. 4(c)(4). The post office address of Defendant Dedria Bastroph is not known to Plaintiffs or Plaintiffs' counsel.

14. Carlyon Smith is an adult resident citizen of Mississippi and may be served with process at 6345 Tchulahoma, Southaven, Mississippi 38671..

15. Karen Mays is an adult resident citizen of Tennessee and may be served with process pursuant to M.R.C.P. 4(c)(5) by certified mail, return receipt ("restricted delivery") to 611 Lester Street, Memphis, Tennessee 38112.

16. Jean Johnson is an adult resident citizen of Mississippi and may be served with process at 7340 Greenbrook Parkway, Southaven, Mississippi 38671. Defendant Jean Johnson, after diligent search and inquiry, cannot be located at this last known address, and, therefore, service of process will be publication pursuant to M.R.C.P. 4(c)(4). The post office address of Defendant Jean Johnson is not known to Plaintiffs or Plaintiffs' counsel.

17. Eric J. Boone is an adult resident citizen of Mississippi and may be served with process at 6011 Elmore Road, Southaven, Mississippi 38671. Defendant Eric J. Boone, after diligent search and inquiry, cannot be located at this last known address, and, therefore, service of process will be publication pursuant to M.R.C.P. 4(c)(4). The post office address of Defendant Eric J. Boone is not known to Plaintiffs or Plaintiffs' counsel.

18. Patricia Guy is an adult resident citizen of Mississippi and may be served with process at 922 Woodburne Place, Southaven, Mississippi 38671.

19. Vicky R. Collier is an adult resident citizen of Tennessee and may be served with process pursuant to M.R.C.P. 4(c)(5) by certified mail, return receipt ("restricted delivery") to 1069 Terry Circle, Memphis, Tennessee, 38107. Defendant Vicky R. Collier, after diligent search and inquiry, cannot be located at this last known address, and, therefore, service of process will be publication pursuant to M.R.C.P. 4(c)(4). The post office address of Defendant Vicky R. Collier is not known to Plaintiffs or Plaintiffs' counsel.

20. Cynthia J. Hailey is an adult resident citizen of Tennessee and may be served with process pursuant to M.R.C.P. 4(c)(5) by certified mail, return receipt ("restricted delivery") to 3365 Wesfield Drive, Memphis, Tennessee, 38115.

21. Elias Guy is an adult resident citizen of Tennessee and may be served with process pursuant to M.R.C.P. 4(c)(5) by certified mail, return receipt ("restricted delivery") to 1256 Driver Street, Memphis, Tennessee 38106.

22. Dorothy Phillips is an adult resident citizen of Mississippi who upon information and belief, may be served with process at 7340 Greenbrook Parkway, Southaven, Mississippi 38671.

23. Upon information and belief, Willie Boone was an adult resident citizen of Shelby County, Tennessee, whose estate may be served with process upon the administrator of his estate, Eric J. Boone, at 6775 Indigo Lake Drive, Olive Branch, Mississippi 38654.

24. Lizzie Gray is an adult resident citizen of Tennessee and may be served with process pursuant to M.R.C.P. 4(c)(5) by certified mail, return receipt ("restricted delivery") to 5040 Long Branch Drive, Memphis, Tennessee 38109-7212.

25. Upon information and belief, Defendants Michael L. Martin, Willie N. Gray, Melvin L. Guy, Katie Holloway, Ben Baker, Mary Kenerson, Robert Guy, Dedria Bastroph, Carlyon Smith, Karen Mays, Jean Johnson, Eric J. Boone, Particia Guy, Vicky R. Collier, Cynthia J. Hailey, Elias

Guy, Dorothy Phillips, and Willie Boone, and Lizzie Gray each claim to be and/or have claimed to be an officer, director, and/or board member of Defendants Phoenix AME, Phoenix HDC, and/or Phoenix CDC.

26. Howard Sommer is an adult resident citizen of Tennessee and may be served with process pursuant to M.R.C.P. 4(c)(5) by certified mail, return receipt ("restricted delivery") to 483 Sutton Place, Memphis, TN 38120. Defendant Howard Sommer, after diligent search and inquiry, cannot be located at this last known address, and, therefore, service of process will be publication pursuant to M.R.C.P. 4(c)(4). The post office address of Defendant Howard Sommer is not known to Plaintiffs or Plaintiffs' counsel.

27. Sears Roebuck and Company is a foreign corporation authorized to do business in the State of Mississippi and may be served with process through its registered agent for service of process, CT Corporation Systems located at 631 Lakeland East Drive, Flowood, MS 39232.

28. General Electric Capital Corporation is a foreign corporation authorized to do business in Mississippi and may be served with process through its registered agent for service of process, CT Corporation Systems located at 631 Lakeland East Drive, Flowood, MS 39232.

29. The Mississippi State Tax Commission is an agency or department of the State of Mississippi and may be served with process by service on Mr. Jim Hood, Mississippi Attorney General, located at Attorney General's Office, Carroll Gartin Justice Building, 450 High Street, Fifth Floor, Jackson, Mississippi.

30. North Mississippi Driveways, Inc., is a Mississippi corporation and may be served with process through its registered agent for service of process, Billy D. Haynes located at 2595 Highway 51 N., Southaven, MS 38671.

31. NFC Finance Corporation is a foreign corporation and may be served with process

pursuant to M.R.C.P. 4(c)(5) by certified mail, return receipt to its registered agent for service of process, National Registered Agents, Inc., located at 1900 Church Street, Suite 400, Nashville, TN 37203.

32. Express Body Works, LLC, is a Tennessee limited liability company and may be served with process pursuant to M.R.C.P. 4(c)(5) by certified mail, return receipt to its registered agent for service of process, Kenneth L. Younger located at 1003 Channel Drive, Memphis, TN 38113.

33. Information Leasing Corporation a/k/a National City Commercial Capital Corporation is an Ohio corporation and may be served with process pursuant to M.R.C.P. 4(c)(5) by certified mail, return receipt to its registered agent of process, CT Corporation, 36 East Seventh Street, Suite 2400, Cincinnati, Ohio, 45202.

34. Upon information and belief, Defendants Howard Sommer, Sears Roebuck and Company, General Electric Capital Corporation, Mississippi State Tax Commission, North Mississippi Driveways, Inc., NFC Finance Corporation, Express Body Works, LLC, and Information Leasing Corporation a/k/a National City Commercial Capital Corporation are judgment lienholders claiming an interest in or to the subject properties and/or structures located on the subject properties.

35. Faith Community A.M.E. Church (hereinafter "Faith AME"), is a Mississippi non-profit corporation and may be served with process through its registered agent for service of process, J. L. Moore, Jr. at 8055 Swinnea Road, P.O. Box 1694, Southaven, Mississippi.

36. Faith AME is a successor-in-interest to Phoenix AME. Faith AME is in possession of the property(s) subject of this lawsuit.

37. The Eighth Episcopal District of the African Methodist Episcopal Church, Incorporated, (hereinafter "Eighth District") is an unincorporated association and may be served with

process through its officer and/or general agent, Bishop Cornal Garnett Henning, Sr., at its usual place of business located at 2138 St. Bernard Avenue, New Orleans, Louisiana, 70119.

38. Based upon information obtained by Plaintiffs since the filing of prior pleadings, it is believed by Plaintiffs that the Eight District claims an interest in the properties subject of this lawsuit and/or structures located on the subject properties.

39. John Doe(s) 1-50 includes any other person and/or entity claiming an interest in the subject properties and/or structures located on the subject properties and/or additional lienholders.

JURISDICTION AND VENUE

40. This Court has jurisdiction over the parties and subject matter herein pursuant to Miss. Const. Art. VI § 159.

41. Venue is proper in the Chancery Court of DeSoto County, Mississippi, pursuant to Miss. Code Ann. § 11-5-1 (1972).

FACTUAL ALLEGATIONS

42. On February 20, 2001, for valuable consideration, Defendants Phoenix AME and Phoenix HDC executed and delivered to Nashoba Bank/Trustmark a Promissory Note ("Note") in the original principal amount of \$1,000,000.00, together with interest thereon at the initial rate of 9.5% per annum, adjustable after five (5) years. A copy of the Note is attached hereto as **Exhibit "A."**

43. In order to secure the indebtedness evidenced by the Note, Phoenix HDC executed a Land Deed of Trust in favor of Nashoba Bank/Trustmark, encumbering the following described real estate, which is **Tract A** of the real estate affected by this suit:

Legal Description of an 8.29, more or less, acres tract of land located in City of Southaven, County of Desoto, State of Mississippi in part of the Northwest and Southwest Quarters of the Northeast Quarter of Section 28, Township 1 South, Range

7 West, and is further described as follows:

Commencing at the northeast corner of said Section thence South 05 Degrees 50 Minutes 43 Seconds West 913.55 feet along the centerline of Getwell Road to a point; thence North 84 Degrees 52 Minutes 14 Seconds West 1858.07 feet to a 3/8 inch steel bar found, being the point of Beginning; thence North 84 Degrees 32 Minutes 31 Seconds West 505.92 feet to a 1 inch iron bar found; thence South 08 Degrees 36 Minutes 25 Seconds West 209.15 feet to a 1/2 inch iron bar found; thence South 89 Degrees 48 Minutes 38 Seconds West 69.42 feet to a steel bolt found on the west right of way of Plum Point Road (80 feet wide); thence along said right of way South 29 Degrees 51 Minutes 08 Seconds East 101.35 feet to a steel bolt found; thence along said right of way South 24 Degrees 53 Minutes 02 Seconds East 73.83 feet to a 3/4 inch iron bar found; thence along said right of way South 24 Degrees 50 Minutes 36 Seconds East 180.48 feet to a 1/2 inch pipe set; thence along said right of way South 19 Degrees 09 Minutes 45 Seconds East 221.08 feet to a 3/4 inch iron bar found; thence North 72 Degrees 42 Minutes 00 Seconds East 564.11 feet to a 3/4 inch iron bar found ; thence North 17 Degrees 17 Minutes 20 Seconds West 380.06 feet to a 3/4 inch bar found; thence North 17 Degrees 16 Minutes 58 Seconds West 144.10 feet to a 3/8 inch steel bar found, being the Point of Beginning, containing 8.29, more or less, acres (381,043 more or less square feet) of land being subject to all codes, regulations and revisions, subdivisions, covenants, easements and rights of way on record.

(The "8.29 Acre Tract"). Upon information and belief, said property has a physical street address of 2554 Plum Point, Southaven, Mississippi.

44. The deed of trust ("Land Deed of Trust I"), of record in Book 1294, page 249 and re-recorded in Book 1299 Page 337 in the Chancery Clerk's Office of Desoto County, Mississippi, was recorded on February 28, 2001. A true and exact copy of the Land Deed of Trust I is attached hereto as **Exhibit "B."** The Land Deed of Trust I secured the Note in the principal amount of One Million Dollars (\$1,000,000.00).

45. Also in order to secure the indebtedness evidenced by the Note, Phoenix AME executed a Land Deed of Trust in favor of Nashoba Bank/Trustmark, encumbering the following described real estate, which is **Tract B** of the real estate affected by this suit:

All that certain real property located in the City of Southaven, County of Desoto, State of Mississippi, and further described as follows:

2.657 acres, more or less, situated in Section 30; Township 1, Range 7 West, Desoto County, Mississippi more particularly described as church site at Southeast corner of Greenbrook Parkway and Greencliff Drive in 1st Revision of Section J, Greenbrook Subdivision, Desoto County, Mississippi, as shown by revised plat of record in Book 15, Pages 16 and 17 in the office of the Chancery Clerk of Desoto County, Mississippi, more particularly described as Beginning at a point in the east line of Greenbrook Parkway; at the beginning of a curve to the right with a radius of 30 feet connecting the south line of Greencliff Drive with the east line of Greenbrook Parkway; thence northwardly and eastwardly along the arc of said curve 47.12 feet to a point at the end of said curve in the south line of Greencliff Drive; thence eastwardly along the south line of Greencliff Drive 461.93 feet to a point in the westerly line of Bridgewater Drive; thence southwardly and eastwardly with the westerly line of Bridgewater Drive 110.40 feet to a point at the northwest corner of Lot 1967, Section J, Greenbrook Subdivision; thence southwestwardly 138.40 feet to a point at the southwest corner of said Lot 1967; thence westwardly at an interior angle of 116 degrees 52 minutes 38 seconds 72.06 feet to a point; thence southwardly at an interior angle of 217 degrees 19 seconds 24.33 feet to a point at the northeast corner of Lot 1957 of said subdivision; thence westwardly 111.51 feet to a point at the northwest corner of said lot 1957 in the easterly line of Fairmont Place; thence northwardly and westwardly with the northerly line of Fairmont Place 262.34 feet to a point in the easterly line of Greenbrook Parkway; thence northwardly with the easterly line of Greenbrook Parkway 200 feet to the Point of Beginning, being the same land shown as Lots 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, and 1966 of Section J, Greenbrook Subdivision of record in Plat Book 11, Page 25 in said Chancery Clerk's Office.

(The "2.657 Acre Tract"). Upon information and belief, said property has a physical street address of 619 Greenbrook Parkway, Southaven, Mississippi.

46. The deed of trust ("Land Deed of Trust II"), of record in Book 1294, page 244 of record in the Chancery Clerk's Office of Desoto County, Mississippi was recorded on February 28, 2001. A true and exact copy of the Land Deed of Trust II is attached hereto as **Exhibit "C."** The Land Deed of Trust II secured the Note in the principal amount of One Million Dollars (\$1,000,000.00).

47. On or about December 14, 2001, Nashoba Bank merged with and into Trustmark National Bank.

48. On January 1, 2002, Defendants Phoenix AME and Phoenix HDC executed a "Change In Terms Agreement" as to the aforementioned Note reducing the interest rate thereon to a fixed rate of 5.75% effective May 31, 2002. A copy of the "Change In Terms Agreement" is attached hereto as **Exhibit "D."**

49. On April 14, 2004, Trustmark substituted T. Harris Collier, III, as trustee for both Deeds of Trust executed in favor of Nashoba Bank/Trustmark. "Filed" copies of the Substitute Trustee documents are attached as **Exhibits "E" and "F."**

50. Upon information and belief, Phoenix CDC operates a daycare facility on Tract A and/or Tract B described above.

51. Upon information and belief, the only other individuals or entities with an interest in the above-described tracts are Howard Sommer, with a judgment lien of record in Cause No. CV-97-292RD in Circuit Court Clerk's Office of Desoto County, Mississippi, in the approximate amount of \$14,993.66; Sears, Roebuck and Co., with a judgment lien of record in Cause No. C097-0737 in said clerk's office, in the approximate amount of \$3,160.64; General Electric Capital Corp., with a judgment lien of record in Cause No. C099-557 in said clerk's office, in the approximate amount of \$6,057.43; all antecedent to the Land Deeds of Trust I and II; and State Tax Commission, with judgment liens of record in Cause No. 31536-W and 31537-W in said clerk's office, in the approximate combined amount of \$7,628.09; NFC Finance Corp., with a judgment lien of record in Cause No. C02-002-616 in said clerk's office, in the approximate amount of \$41,697.83; Express Body Works, LLC, with a judgment lien of record in Cause No. C0-2003-412 in said clerk's office, in the approximate amount of \$6,456.25; North Mississippi Driveways, Inc., with a judgment lien of record in Cause No. C2003-1602 in said clerk's office, all subordinate to Land Deeds of Trust I and II. Trustmark has notified all the above referenced interested parties of this Amended Complaint

and the relief requested herein by serving each with a copy of the Amended Complaint through legal process.

52. Default has been made under the Note entered into by Phoenix AME and Phoenix HDC. Specifically, Defendants Phoenix AME and Phoenix HDC have failed to pay the indebtedness secured by the Land Deeds of Trust I and II pursuant to the express terms of the Note.

53. On February 20, 2004, by correspondence to Defendants Phoenix AME and Phoenix HDC on behalf of Trustmark, Defendants Phoenix AME and Phoenix HDC were notified of the default and given an opportunity to cure the default in accordance with the terms of the Land Deeds of Trust I and II. A copy of the demand letter is attached hereto as **Exhibit "G."**

54. Defendants Phoenix AME and Phoenix HDC failed to cure the default. Accordingly, Trustmark is entitled to the remedy and benefit of a foreclosure of the Land Deeds of Trust I and II and the sale of the 2.657 Acre Tract and the 8.29 Acre Tract to satisfy the indebtedness evidenced by same.

55. When Defendants Phoenix AME and Phoenix HDC executed the Land Deeds of Trust I and II, the notarial acknowledgments placed on both Deeds of Trust were technically defective under Mississippi law because they did not include statutorily prescribed language to indicate that the instrument was "signed and delivered". In addition, the Deed of Trust on the 8.29 acre tract ("Land Deed of Trust I") is defective because it was executed by Phoenix AME, but purports to encumber property owned by Phoenix HDC. It was the intention of the parties that the notarial acknowledgments include statutorily prescribed language. It was also the intention of the parties that the correct vested entity execute the appropriate deed of trust encumbering the intended and correct property.

COUNT I**Reformation**

56. The averments contained in paragraphs 1 through 55 of the Third Amended Complaint are realleged and incorporated herein verbatim by reference.

57. The liens granted under Trustmark's trust deeds were intended to encumber Tract A and Tract B as collateral for the loans made by Trustmark to Defendants Phoenix AME and Phoenix HDC. Furthermore, it was the parties' intention that the trust deeds be prepared, executed and recorded consistent with all Mississippi statutory requirements and granting Trustmark a security interest in said tracts of land. Accordingly, Trustmark is entitled to have the Land Deeds of Trust I and II reformed to reflect statutorily correct notarial acknowledgments as well as the correct vested party granting a secured interest in the correct vested collateral.

COUNT II**Declaratory Judgment and Foreclosure of Deeds of Trust**

58. The averments contained in paragraphs 1 through 57 of the Third Amended Complaint are realleged and incorporated herein verbatim by reference.

59. As a result of the default of Defendants Phoenix AME and Phoenix HDC under the terms of the Note and Land Deeds of Trust, Trustmark is entitled to have the Court declare Trustmark's superior right, title and interest in the 2.657 acre Tract with the structure(s) located thereon and the 8.29 acre Tract with the structure(s) located thereon ("the Property"), and divest Defendants of any right, title or interest in the Property, and to have the Court declare Trustmark's right to invoke the power of sale in accordance with the terms of the Land Deeds of Trust I and II.

60. Under the terms of the Note and Land Deeds of Trust I and II, Trustmark is entitled to recover from Defendants Phoenix AME and Phoenix HDC all reasonable attorney's fees, costs

and expenses incurred in enforcing the Land Deeds of Trust I and II and effecting the sale of the Property.

COUNT III

Deficiency Judgment

61. The averments contained in paragraphs 1 through 60 of the Third Amended Complaint are realleged and incorporated herein verbatim by reference.

62. As a result of the default of Defendants Phoenix AME and Phoenix HDC under the terms of the Note and Land Deeds of Trust, Trustmark is entitled to a money judgment against Defendants Phoenix AME and Phoenix HDC in the amount of any deficiency due and owing Trustmark after the sale of the Property.

WHEREFORE, Plaintiff Trustmark National Bank prays that this Court enter a judgment as follows:

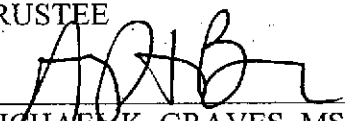
- a. That proper process issue and be served requiring the Defendants to answer this Third Amended Complaint within the time and manner prescribed by law and the rules of this Court.
- b. That the Land Deeds of Trust I and II be reformed so as to reflect that the Land Deeds of Trust I and II contain statutorily correct notarial acknowledgments as well as the correct vested parties granting a security interest in the correct vested collateral.
- c. That the Court enter an Order declaring Trustmark to have superior right, title, and interest in and to the above-described properties ("Tract A" and "Tract B") and divesting Defendants of any right, title, and/or interest in and/or to the above-described subject properties.
- d. That the Court enter an Order appointing the substituted trustee as its commissioner for the purpose of conducting a foreclosure sale of the property subject to the Land Deeds of Trust I and II.
- e. That the Court enter an Order authorizing Trustmark, through its court-appointed commissioner, to conduct a foreclosure sale of the above-described subject properties ("Tract A" and "Tract B").

- f. That, upon presentment of proof as required by the Court, Defendants Phoenix AME and Phoenix HDC be ordered to pay Trustmark any deficiency between the sale price obtained upon foreclosure and the balance due on the debt, in addition to all reasonable fees, including attorney's fees, expenses, and costs incurred by Trustmark in enforcing the Land Deeds of Trust and effecting the sale of the Property.
- g. That Trustmark have and recover its reasonable attorneys fees and all costs of this action.
- h. That Trustmark have and recover such other further and general relief to which it may be entitled.

DATED this the 21st day of December, 2006.

TRUSTMARK NATIONAL BANK, AND
T. HARRIS COLLIER, III, SUBSTITUTED
TRUSTEE

BY:


MICHAEL K. GRAVES, MSB NO. 9359
AMY HOLLIMAN BROWN, MSB NO. 100080
Myers Graves & Parker, PLLC
140 W. Center Street
Hernando, Mississippi 38632
(662) 429-1994
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Amy Holliman Brown, Attorney of record for Plaintiff Trustmark National Bank, in the above and foregoing styled and numbered cause, do hereby certify that I have this day delivered a true and correct copy of the above and foregoing **Plaintiffs' Fourth Amended Complaint**, via U.S. Mail, postage prepaid, to the following:

Joseph M. Sparkman, Esq.
Sparkman-Zummach
P. O. Box 266
Southaven, MS 38671

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8342 Macon Road
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Honorable Alex Gates, Trustee
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Cynthia Hailey
922 Woodburne Place
Southaven, MS 38671

Cynthia Hailey
3365 Westfield Drive
Memphis, TN 38115

Mr. Elias Guy
1256 Driver Street
Memphis, TN 38106

Ms. Patricia Guy
4830 Waterstone Drive
Olive Branch, MS 38654

Estate of Mr. Willie Boone, Deceased
c/o Mr. Eric Boone
6775 Indigo Lake Drive
Olive Branch, MS 38654

Ms. Dorothy Phillips
3365 Westfield Drive
Memphis, TN 38115

Mr. Eric Boone
6775 Indigo Lake Drive
Olive Branch, MS 38654

This, the 21st day of December, 2006.

STATE OF MISSISSIPPI, COUNTY OF DESOIN
HEREBY CERTIFY that the above and foregoing is
a true copy of the original filed in this office.
This the 21st day of December, 2006
W. E. Davis, Clerk of the chancery court

By [Signature] D.C.

[Signature]
AMY HOLLIMAN BROWN, MSB NO. 100080